

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

CAROL KAPLAN,
Plaintiff,

-vs.-

DEMAND FOR JURY TRIAL

TIMOTHY E. BAXTER & ASSOCIATES, P.C.,
Defendant.

COMPLAINT & JURY DEMAND

Plaintiff, Carol Kaplan, through counsel, Nitzkin and Associates, by Gary Nitzkin states the following claims for relief:

JURISDICTION

1. This court has jurisdiction under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §1692k(d) and 28 U.S.C. §§1331,1337.
2. This court may exercise supplemental jurisdiction over the related state law claims arising out of the same nucleus of operative facts which give rise to the Federal law claims.

PARTIES

3. The Defendant to this lawsuit is Timothy E. Baxter and Associates, P.C. which is a Michigan professional corporation doing business in Oakland County, Michigan.

VENUE

4. The transactions and occurrences which give rise to this action occurred in Oakland County.
5. Venue is proper in the Eastern District of Michigan.

GENERAL ALLEGATIONS

6. At all times relevant to this complaint, the Defendant has been attempting to collect on a consumer type debt alleged owed by Plaintiff to Chase Bank.
7. On or about October 4, 2011, Plaintiff spoke with Defendant. Defendant told Plaintiff that they are going to file a lawsuit against her on October 6, 2011 and get a judgment entered and put a lien on her home.
8. Plaintiff told Defendant that she is dying of cancer. Defendant replied by telling her that she needs to be more responsible.
9. Plaintiff is in very poor health, losing weight quickly, although doing her best to survive for as long as she can.
10. Immediately after this conversation, the Plaintiff vomited due to the stress unduly placed upon her by the defendant by threatening to place a lien on her home.
11. Stress of any kind including that which has been improperly and illegally exerted upon her by the defendant causes her great physical and emotional stress which has been documented by her physicians.
12. To date, Plaintiff has not received any lawsuit from Defendant.

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

13. Plaintiff reincorporates the preceding allegations by reference.
14. At all relevant times Defendant, in the ordinary course of its business, regularly engaged in the practice of collecting debts on behalf of other individuals or entities.
15. Plaintiff is a "consumer" for purposes of the FDCPA and the account at issue in this case is a consumer debt.
16. Defendant is a "debt collector" under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a(6).
17. Defendant's foregoing acts in attempting to collect this alleged debt violated 15 U.S.C. §1692 et. seq;
18. The Plaintiff has suffered damages as a result of these violations of the FDCPA.

COUNT II - VIOLATION OF THE MICHIGAN OCCUPATIONAL CODE

19. Plaintiff incorporates the preceding allegations by reference.
20. Defendant is a "collection agency" as that term is defined in the Michigan Occupational Code ("MOC"), M.C.L. § 339.901(b).
21. Plaintiff is a debtor as that term is defined in M.C.L. § 339.901(f).
22. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §339.915
23. Plaintiff has suffered damages as a result of these violations of the Michigan Occupational Code.
24. These violations of the Michigan Occupational Code were willful.

COUNT III - VIOLATION OF THE MICHIGAN COLLECTION PRACTICES ACT

25. Plaintiff incorporates the preceding allegations by reference.
26. Defendant is a "Regulated Person" as that term is defined in the Michigan Collection Practices Act ("MCPA"), at MCL § 445.251.
27. Plaintiff is a "Consumer" as that term is defined at MCL § 445.251.
28. Defendant's foregoing acts in attempting to collect this alleged debt violated MCL §445.252
29. Plaintiff has suffered damages as a result of these violations of the MCPA.
30. These violations of the MCPA were willful.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

DEMAND FOR JUDGMENT FOR RELIEF

Accordingly, Plaintiff requests that the Court grant him the following relief against the defendant:

- a. Actual damages.
- b. Statutory damages.
- c. Treble damages.
- d. Statutory costs and attorney fees.

Respectfully submitted,

November 4, 2011

/s/ Gary Nitzkin

GARY D. NITZKIN P41155

MICHIGAN CONSUMER CREDIT LAWYERS

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